

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MARK ALLEN SILVA,

Plaintiff,

v.

LEWIS COUNTY PROSECUTOR'S
OFFICE,

Defendant.

CASE NO. 3:24-cv-05504-TMC-GJL

ORDER DECLINING TO DIRECT
SERVICE AND DIRECTING
PLAINTIFF TO CLARIFY CLAIMS

The District Court has referred this action to United States Magistrate Judge Grady J. Leupold. Before the Court is Plaintiff Mark Allen Silva's Motion to Proceed *In Forma Pauperis* ("IFP") and his Proposed Complaint. Dkts. 1, 1-1. Because it is unclear whether Plaintiff, who is proceeding *pro se*, seeks relief available through a 42 U.S.C. § 1983 civil rights action or through a 28 U.S.C. § 2254 petition for writ of habeas corpus, the undersigned **DECLINES** to direct service of his Proposed Complaint and, instead, **DIRECTS** Plaintiff to clarify the nature of his claims by filing either an amended civil rights complaint or a federal habeas petition. Also, because the filing fees for habeas and § 1983 actions are different, the Court **DEFERS** decision on the IFP Motion until Plaintiff has clarified the nature of this suit.

I. BACKGROUND

Plaintiff, an inmate currently housed at Washington Corrections Center (“WCC”), alleges his due process rights and his right to a speedy trial were violated when he was forced to undergo an in-patient competency evaluation without being tested on his knowledge of courtroom procedures during a state-court prosecution. Dkt. 1-1 at 4–5. He also claims he received ineffective assistance of counsel because his trial attorney allowed the competency evaluation to occur without just cause. *Id.* at 6.

As relief, Plaintiff requests \$2 million in compensatory damages and wide sweeping injunctive relief aimed at the Washington State Superior Court for Lewis County. *Id.* at 9.

II. DISCUSSION

Under the Prison Litigation Reform Act of 1995, the Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must “dismiss the complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.” *Id.* at (b); 28 U.S.C. § 1915(e)(2); *see Barren v. Harrington*, 152 F.3d 1193 (9th Cir. 1998). Dismissal on these grounds counts as a “strike” under 28 U.S.C. § 1915(g).

After informing a *pro se* litigant of any pleading deficiencies, a court must generally grant leave to file an amended complaint if there is a possibility the pleading deficiencies may be cured through amendment. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir.1992); *see also Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (“A district court should not dismiss a *pro se* complaint without leave to amend unless ‘it is absolutely clear that the deficiencies of the

1 complaint could not be cured by amendment.”) (quoting *Schucker v. Rockwood*, 846 F.2d 1202,
2 1203–04 (9th Cir. 1988)).

3 Plaintiff has filed this action under § 1983, but his claims challenge aspects of his state
4 court prosecution, which are typically under the purview of a federal habeas action. Therefore, it
5 is unclear from Plaintiff’s Proposed Complaint whether he seeks to proceed with this matter as a
6 civil action for relief under 42 U.S.C. § 1983 or whether Plaintiff seeks to challenge the validity
7 of his confinement through a habeas petition pursuant to 28 U.S.C. § 2254. Thus, his Proposed
8 Complaint is deficient and must be corrected in the ways described below before Plaintiff may
9 proceed in this action.

10 **A. Habeas Corpus versus § 1983 Action**

11 An “action lying at the core of habeas corpus is one that goes directly to the
12 constitutionality of the prisoner’s physical confinement itself.” *Preiser v. Rodriguez*, 411 U.S.
13 475, 503 (1973). Thus, “when a state prisoner is challenging the very fact or duration of his
14 physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate
15 release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas
16 corpus.” *Preiser*, 411 U.S. at 500. “If a state prisoner is seeking damages, he is attacking
17 something other than the fact or length of his confinement, and he is seeking something other
18 than immediate or more speedy release.” *Id.* at 494. In that instance, a prisoner must file a civil
19 rights action pursuant to § 1983. *Heck v. Humphrey*, 512 U.S. 477, 482–83 (1994).

20 Applying these principles here, if Plaintiff seeks to challenge the validity of his state-
21 court conviction and sentence, he must do so by filing a habeas petition under 28 U.S.C. § 2254
22 on the form provided by the Court. If, on the other hand, Plaintiff is seeking to challenge
23 something other than the fact or duration of his confinement (for instance, if he is seeking
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1 damages for unconstitutional conditions of confinement), then he should file an amended § 1983
2 complaint on the form provided by the Court.

3 **B. Proper Defendant or Respondent**

4 In addition to proceeding under the correct cause of action and using the appropriate
5 court-provided form, Plaintiff must name a proper defendant or respondent in this action.

6 If Plaintiff intends to bring a habeas petition seeking release from confinement, then he
7 must name a proper respondent—which is the person who has custody over him. *Rumsfeld v.*
8 *Padilla*, 542 U.S. 426, 434 (2004). Thus, to name the proper respondent for a § 2254 habeas
9 petition, Plaintiff must name the warden or superintendent of WCC. *See id.* at 435.

10 However, if Plaintiff wishes to proceed under § 1983, he must plausibly allege: (1) he
11 suffered a violation of rights protected by the Constitution or created by federal statute, and (2)
12 the violation was proximately caused by a person acting under color of state law. *See Crumpton*
13 *v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). Thus, the only proper defendants for a § 1983
14 action are “persons” who proximately cause a constitutional deprivation while “acting under
15 color of state law.” *West*, 487 U.S. at 48. This language limits the applicability of § 1983 actions
16 against States, counties, and the employees thereof.

17 For example, States and state entities are not “persons” who can be sued under § 1983.
18 *See Howlett v. Rose*, 496 U.S. 356, 365 (1990). Likewise, state employees are not “persons”
19 under § 1983 when they are sued for monetary damages in their official capacities. *See Will v.*
20 *Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989).

21 When a municipality or county is sued under § 1983, the only proper defendant for an
22 official capacity claim is the county itself. *See Nolan v. Snohomish County*, 59 Wn. App. 876,
23 883, 802 P.2d 792 (1990); *Monell v. Department of Soc. Servs. of City of New York*, 436 U.S.

1 658, 691–94 (1978). Moreover, when a county employee is sued in their official capacity, the
2 real party in interest is the county itself. Thus, to state a claim against a county or a county
3 employee in their official capacity, a § 1983 plaintiff must identify a county policy or practice
4 that was the moving force behind their alleged constitutional injury. *Bd. of the Cnty. Comm’rs of*
5 *Bryant Cnty. v. Brown*, 520 U.S. 397, 403 (1997) (citing *Monell*, 436 U.S. at 694).

6 As for an individual county or state employee sued for damages under § 1983, a plaintiff
7 must allege facts showing how the individually named defendant caused, or personally
8 participated in causing, the harm alleged in the complaint. *See Leer v. Murphy*, 844 F.2d 628,
9 633 (9th Cir. 1988); *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981). An individual
10 defendant may personally cause a constitutional injury by committing an affirmative act, by
11 furthering the affirmative act of another, or by failing to perform a legally required act. *Johnson*
12 *v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

13 In his Proposed Complaint, Plaintiff names the Lewis County Prosecutor’s Office as the
14 only defendant for his § 1983 claims. As discussed above, the only county entity capable of
15 being sued is the county itself. Thus, if Plaintiff wishes to proceed under § 1983, he should not
16 name any Lewis County entities as a defendant in his amended pleadings. Further, Plaintiff
17 should only name Lewis County as a defendant if he can provide additional facts demonstrating
18 that his alleged injuries were the result of a county-level policy or custom.

19 Additionally, Plaintiff seeks injunctive relief from the Superior Court for Lewis County
20 but does not name that entity as a defendant in this action. As an initial matter, Plaintiff cannot
21 obtain relief from a non-party to this action. However, even if it were named as a party in this
22 suit, the Superior Court for Lewis County is an entity of the State of Washington, so it is not a
23 “person” that can be sued for any relief under § 1983. Therefore, Plaintiff should not name or
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1 seek relief from the Superior Court for Lewis County—or any other state entity—in his amended
2 pleadings.

3 Next, Plaintiff does not name any individuals as defendants in his Proposed Complaint.
4 Even so, before naming any individual as a defendant in his amended pleadings, Plaintiff must
5 be able to provide sufficient facts demonstrating how that individual was personally involved in
6 causing his alleged constitutional injuries.

7 Finally, Plaintiff is advised that each claim brought in his amended pleadings must be
8 attributed to at least one defendant. If plaintiff is unable to attribute a claim to a defendant
9 capable of being sued under § 1983, that claim should not be included in his amended pleadings.

10 III. CONCLUSION

11 Because it is unclear from Plaintiff's filings whether he would like to proceed under 42
12 U.S.C. § 1983 or under 28 U.S.C. § 2254, the Court **DECLINES** to direct service of his
13 Proposed Complaint (Dkt. 1-1) and **DEFERS** decision on the IFP Motion (Dkt. 1) until after
14 Plaintiff has clarified the nature of his suit.

15 If Plaintiff wishes to continue prosecuting this case, he is **DIRECTED** to clarify the
16 nature of his suit on or before **August 9, 2024**, by using the appropriate court-provided form to
17 file either (1) an amended civil rights complaint pursuant to 42 U.S.C. § 1983 or (2) a petition for
18 writ of habeas corpus pursuant to 28 U.S.C. § 2254. Failure to do so by the stated deadline will
19 be considered a failure to prosecute and may result in a recommendation that this action be
20 dismissed.

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1 Finally, the Clerk of Court is directed to **RENOTE** Plaintiff's IFP Motion (Dkt. 1) for
2 consideration on **August 9, 2024**. The Clerk is further directed to send Plaintiff a copy of this
3 Order, the forms for filing a § 1983 complaint and a § 2254 habeas petition, and the Court's *pro*
4 *se* litigation guide.

5 Dated this 9th day of July, 2024.

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7 A handwritten signature in black ink, appearing to read 'Grady J. Leupold', is written over a solid black horizontal line.

8 Grady J. Leupold
9 United States Magistrate Judge
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